



AMERICAN BAR ASSOCIATION

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Testimony of

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COMMITTEE ON INTERNATIONAL RELATIONS

U.S. HOUSE OF REPRESENTATIVES

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Mr. Chairman and Members of the Subcommittee:

My name is Armando E. Lacasa and I am pleased to appear before the Subcommittee this morning in my capacity as Chair of the American Bar Association's Latin America and Caribbean Law Initiative (ABA/LALIC) and, on behalf of our Council members, I would like to express our appreciation for the opportunity to testify on the issue of Rule of Law in the Americas.

Transparent government institutions and a legal system based on the rule of law are fundamental prerequisites to creating vibrant democracies and market-based economies. Democratic regimes are less likely to engage in terrorist activity and spawn tragic and costly regional conflict. Programs to promote the rule of law and democratization abroad are a sound investment of U.S. dollars that enhance the national security and economic prosperity not only of the emerging democracies, but also of our own nation.

ABA/LALIC

ABA/LALIC is one of four regional councils created by the American Bar Association to address the growing need to contribute to democratization through legal development efforts in the region and throughout the world. ABA/LALIC works with governments of the Americas, with highest-level judiciaries, academia and with national bar associations in various countries. Its organizational structure is comprised of a ten-member Council and a 12 member Advisory Council. It has a program and administrative staff, headed by the Council Director, and is partially supported by volunteers and by the membership of the American Bar Association. In Latin America, ABA/LALIC has been recognized as a credible, culturally sensitive advocate for the rule of law.

FOCAL AREAS AND CORE PRINCIPLES

Like all the other International Councils of the ABA, which operate in over 40 countries in Africa, Asia, Central Europe and Eurasia and Latin America, four principles govern the ABA Latin America and Caribbean Law Initiative. Our projects must respond to host country needs; provide neutral, comparative advice; draw on *pro bono* expertise whenever possible; and abide by strict conflict-of-interest guidelines. As the world's largest voluntary professional association, we draw upon more than 400,000 members, leveraging U.S. foreign assistance dollars with tens of millions of dollars of *pro bono* assistance worldwide.

INITIATIVES IN LATIN AMERICA

Conceptually, ABA/LALIC's projects are organized into substantive "focal" areas. These include, Judicial Reform, Anti-Corruption/Public Integrity, Legal Professional Advancement, Legal Education Reform, Conflict Mitigation and Criminal Law Reform/Anti-Trafficking. I will only mention a few of our projects here:

Mexico – Court Annexed Mediation: Over the last two years, ABA/LALIC has worked with Mexican states to introduce and enhance court-annexed mediation services in Mexico.

ABA/LALIC was awarded a two million-plus dollar grant over two years by the USAID Mexico Mission to assist three to four states in Mexico in incorporating mediation into their judicial services. Today twenty-two states participate. The project has produced numerous documents that are used throughout Mexico, including basic mediation manuals, design center manuals, administration manuals, train-the-trainer manuals, family mediation manuals and others. It has trained over 400 mediators and assisted in the opening of 19 mediation centers in 13 states. No funds from the project have been used to open or operate any center; instead the project concentrates on providing technical know-how and developing a strong national network. At present four additional states have formally requested to enter the project; the project is working with all four on an informal basis but is unable to accept them as full participants due to funding concerns. It is important to emphasize that, through this two million dollar investment made by the U.S. government, Mexican states jointly have not only matched but also greatly surpassed the initial investment. As to results, in the state of Oaxaca the number of cases opened jumped from 608 in 2003 to 2,887 in 2004. Additionally, members of indigenous tribes are making 12-hour journeys on horse from some of the most remote areas in that state to seek the services of the mediation center there. In the state of Puebla over 5,000 files have been opened since 2003, with over 3,000 cases mediated and 95% reaching agreement. At the last meeting of the committee of assessors for the project, composed of representatives from all twenty-two states, the committee strongly recommended that the Mediation Project be extended beyond September 2005 and that it focus on penal mediation, as Mexico is undergoing a criminal justice reform initiative.

Ecuador—Trafficking in Persons: The U.S. Department of State's Trafficking in Persons Office awarded ABA/LALIC funding for a Trafficking in Persons Project in Ecuador. In January 2005, the Project completed the first wide-ranging assessment of human trafficking in that country. Project staff and internationally recognized experts did the fieldwork to study where trafficking was taking place, who the victims were, who the criminals promoting trafficking were, and what other dimensions of the problem could be ascertained. The assessment was the first step in building a national movement to combat trafficking. Using the assessment as a starting point, an advisory committee of Ecuadorian legislators, presidential executive staff, law enforcement, prosecutors, NGOs, law professors, and leaders in the private sector brought together by the project has begun holding meetings regularly to coordinate a response to trafficking. The advisory committee has already provided input into a strategy for a national plan to respond to the growing trafficking problem. Among the initiatives mentioned are types of training, awareness campaigns, legislative efforts and a strong network to serve as the foundation from which to organize. The advisory committee meeting had been planned prior to the ousting of the sitting president of Ecuador and took place as scheduled less than two weeks after this event. It was most telling to see current government representatives and other operatives very much committed to working towards a goal to eradicate trafficking despite the significant political turmoil the country was undergoing. Project staff has been working closely with Ecuadorian Congressional representatives from the previous and current administrations to provide technical assistance in the drafting of current anti-trafficking legislation. Congressional representatives view the project and ABA/LALIC as a technical expert sensitive to the needs of the country.

Ecuador—Criminal Procedure Code Implementation: ABA/LALIC is working with the International Narcotics and Law Enforcement Office of the U.S. Embassy in Ecuador to train prosecutors, judges, judicial administrative staff, and universities nation-wide on trial advocacy

and trial techniques. Ecuador implemented criminal justice reform and opted for a common law-based criminal procedure code. However, implementation of the new law has proven challenging. The ABA, in partnership with the Supreme Court of Puerto Rico, is developing a mock trial in which Ecuadorian and Puerto Rican teams will be assembled. Each Ecuadorian judge, prosecutor, defense lawyer and criminal investigator will be paired up with a counterpart from Puerto Rico to execute the trial demonstration. This project is a skills-based initiative not only to transfer useful trial techniques but also to demonstrate how legal abstractions translate into day-to-day proceedings in a criminal court. Among the areas of special attention are the roles of prosecutors, judges and defense counsels, the role and purpose of expert witnesses, the process for the submission of evidence and the importance of coordination between law enforcement and the prosecutor's office.

Peru—Judicial Independence: After the systematic destruction of democratic institutions under Alberto Fujimori, Peru in recent years has moved to return to the rule of law. ABA/LALIC has been providing technical legal assistance in this process. The Peruvian government has approached ABA/LALIC about providing technical assistance regarding the role of prosecutors in an adversarial system. ABA/LALIC addressed prosecutors from Lambayeque, Peru and did a comparative study of the inquisitorial and adversarial models, along with a presentation of the role of the prosecutor, the submission of evidence and the challenges ahead with some lessons learned. The program was well received and LALIC will continue to provide guidance through trainings and conferences as requested prior to full programmatic roll-out in 2006.

Costa Rica—Combating Institutional Corruption: ABA/LALIC conducted a transparency assessment of the Costa Rican Coast Guard and Customs Service. Costa Rica has an existing, but weak, auditing capacity in most government departments. The assessment found that recent high-profile examples of public corruption had increased the likelihood of success for targeted projects to improve auditing in both Coast Guard and Customs Services. The council expects to move forward on a follow-up initiative some time this year.

Paraguay—Procurement Legislation: Working with the Organization of American States, ABA/LALIC contracted a seasoned lawyer volunteer to work with Paraguayan government officials and legal experts to reform Paraguay's Procurement Laws, which date back to 1909. The entire legislation was restructured to meet the needs and the present circumstances of Paraguay.

Regional—Hague Conference on Implementation of the Hague Convention on Civil Aspects of Child Abduction: In partnership with the Hague Conference on Private International Law and with the U.S. Department of State's Office of Children's Issues, ABA/LALIC sponsored a conference last December. Participants included ninety Judges, Central Authority officials and other experts from Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Spain, United States of America, Uruguay, and Venezuela and the following organizations: Organization of American States - Inter-American Children's Institute, International Centre for Missing and Exploited Children, Texas-Mexico Bar Association and the Law School of Instituto Tecnológico y de Estudios Superiores de Monterrey Mexico. Participants discussed how to improve, among the countries represented, the operation of *the Hague Convention of 25 October*

1980 on the Civil Aspects of International Child Abduction. As a result additional on-site trainings have been developed for El Salvador and Costa Rica.

THE RULE OF LAW IN THE AMERICAS

In Latin America, unfortunately, the implementation of the Rule of Law has been the exception rather than the rule. Many of those countries have been governed by the rule of man rather than by the rule of law. The end result has been violations of human rights, non-democratic governments, and lack of economic development. Governance through democratic principles is a new concept that is slowly taking root in the region. Most Latin American constitutions are twenty-five years old or less. Compared to thirty years ago, we see much progress in the important steps taken by various Latin American nations to develop democratic principles.

Much work remains to be done. Throughout the Americas one of the greatest challenges in the development sector will be to enable the region's justice systems to effectively maintain order, deter crime, provide due process and equal protection and instill trust and respect for the law.

By collaborating with countries in the Americas to establish effective legal systems, the U.S. contributes to stability in the region, which in turn promotes commercial development, increased security, and eradication of social inequities. We know that the economic development of any nation is tied to the institution of the rule of law. Without it there will be little or no enticement for potential foreign entrepreneurs from more developed countries to risk their investment where they may not be afforded an appropriate legal forum when needed. Countries with more effective and equitable legal systems provide more stable and attractive environments for investment. Chile is a prime example of what can happen in less than one generation.

Increased investment invigorates local economies, promotes economic growth, develops a capable work force and creates a favorable environment for U.S. investors. ABA lawyer members doing business in Latin America often comment on the need for established uniform practices and laws when dealing with countries in Latin America and point to uncertainty and unstable political climates as the main reason for shying away from investing there.

The U.S. in all its forms (government, NGOs, private sector) must work to foster a partnership with its neighbors to the South. In the context of BancoSur and TeleSur, whose stated purpose is to distance itself from U.S. interests, this work becomes increasingly urgent. The war on terror cannot be won without the confidence that our closest neighbors see us as their allies. Asia, Europe, Eurasia and the Middle East are working hard on Latin American investment and long-term relationship building. For the U.S. to be marginalized in this process is extremely dangerous.

We consider the efforts made by this administration to arrive at a regional understanding regarding trade issues a positive step. Whether this is accomplished through the Free Trade Area of the Americas (FTAA), Central American Free Trade Agreement (CAFTA), or some other form of mutual agreement will take additional negotiation and compromise on both sides. This effort is important not only because it sets parameters and allows all trading partners to understand each other's expectations and be able to rely on certain set principles. For investors

and lawyers handling the legal aspects of these dealings a uniform set of principles will be extremely valuable.

ABA/LALIC FUTURE INITIATIVES

Before closing, I would like to advise this Subcommittee of two other important initiatives that the ABA and ABA/LALIC are working towards for the fall of 2005 and 2006.

International Rule of Law Symposium November 2005: Over the past decade, governments, development banks, donors, foundations, multi-national corporations, and others have demonstrated a growing commitment, in both word and deed, to strengthen the rule of law, often by responding to the urgent problems posed by countries making the difficult transition to democratic rule. However, today's greater global interdependence requires a more comprehensive and assertive approach to promoting the rule of law. Such an approach requires the mobilization of a diverse group of stakeholders, some of whom have not been actively engaged in rule of law promotion efforts to date. To address these and related challenges, the American Bar Association, working with other organizations committed to promoting the rule of law worldwide, will convene a two-day International Rule of Law Symposium in Washington, D.C. on November 9-10, 2005. Participants from both developing and developed countries will share their insights and experiences at the Symposium. The goal of the Symposium is to build a broad-based movement to promote the rule of law and to devise new strategies for its advancement. Building a movement must begin by presenting a compelling case to a diverse group of stakeholders on the urgency of advancing the rule of law globally. Making this case will require: (1) showing the connection between the rule of law on the one hand and economic development, democratization, security, good governance and poverty reduction on the other; and (2) persuading stakeholders of their common interest in promoting the rule of law.

The Inter-American Center for Trade and the Law: ABA/LALIC is presently engaged, with the support of the Governor of Puerto Rico, the Supreme Court of Puerto Rico and the University of Puerto Rico in the evaluation process of a proposed Center dedicated to the promotion and enrichment of trade-related law that may include areas such as Intellectual Property, Commercial Litigation, Dispute Resolution and others. The primary purpose of this Center is to become the point of contact for information and a meeting of the minds in the actual implementation of trade-related law and issues. The Center will operate as both a think tank and a training institute, with policy developments informing curriculum in practical trainings designed for practicing lawyers. The trainings, in turn, will provide information from the field to enrich discussions and publications on policy.

CONCLUSION

Targeted foreign assistance to establish and strengthen legal systems and institutions grounded in the rule of law is a critical component of U.S. efforts to develop stability among emerging democracies. Advancing the rule of law is vital to ensuring the protection and promotion of U.S. national security and economic interests. Rule of law programs such as those described above are a highly cost-effective mechanism to advance the development of democracy abroad.

It is extremely important, however, that efforts promoting the rule of law be conducted with great sensitivity towards local cultures and respect for national sovereignty. This must be a bilateral effort where both parties learn from one another and respect existing legal systems and traditions.

It is in view of these realities that the ABA has a significant role to play. We are perceived as a neutral source of legal expertise, which cares seriously for the implementation of the rule of law not only in the United States and in the most economically advanced countries, but also in developing nations.

Much progress has been made in Latin America over the past 25 years; but much more remains to be done. For these reasons, the ABA urges the Committee to continue and to increase its vigilance regarding programs that support international rule of law initiatives in the Western Hemisphere. Your support for programs and funding to promote the rule of law in Latin America is critical to our efforts, and to the future of the entire region.

On behalf of ABA/LALIC, I thank the members of the Subcommittee for this opportunity to discuss these important issues. The ABA will be pleased to provide any necessary further information and to respond to any questions that the Subcommittee may have.